

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

FIVE STAR BANK,

Plaintiff,

v.

KATHERINE MOTT, ROBERT HARRIS; KRM EVENTS, LLC; KATHERINE'S ON MONROE, LLC; THE DIVINITY ESTATE AND CHAPEL, LLC; KNC ELEGANCE, LLC d/b/a THE WINTERGARDEN BY MONROES; 11 WEXFORD GLEN, LLC; RCC MONROES LLC; NAF REMODELING LLC; MONROES AT RIDGEMONT LLC; CRESCENT BEACH AT THE LAKE LLC; and MOTT MANAGEMENT LLC;

Defendants.

CASE NO. 6:24-cv-6153

CIVIL ACTION

**DECLARATION IN SUPPORT OF
MOTION FOR EXPEDITED
DISCOVERY**

David G. Burch, Jr., Esq., declares as follows under the penalty of perjury:

1. I am an attorney-at-law duly licensed to practice in the State of New York and am a partner in the law firm of Barclay Damon LLP, counsel to Plaintiff Five Star Bank ("Plaintiff"). As such, I am fully familiar with the matters set forth herein.

2. I submit this declaration in further support of Plaintiff's motion, pursuant to Rule 7 of the Local Rules of Civil Procedure for the Western District of New York and Rule 26(d) of the Federal Rules of Civil Procedure, for leave to serve limited expedited discovery from six (6) non-party financial institutions that are in possession of information directly relevant to Plaintiff's claims in this action.

3. As set forth in Plaintiff's underlying motion, expedited discovery is necessary because Defendants continue to refuse to provide information to Plaintiff regarding the location of the proceeds of Defendants' check-kiting scheme. The appointment of Mark Kercher, CPA as Receiver has not remedied Plaintiff's concerns, as the approximately \$20 million Plaintiff alleges

Defendants stole remains unaccounted.

4. Moreover, it is my understanding that certain financial institution(s) have refused to provide the Receiver with information absent the issuance of a subpoena, which only furthers the need for such discovery.

5. In the instances where the Receiver has been able to obtain information concerning Defendants' finances and accounts, Plaintiff has requested that Defendants consent to the Receiver's disclosure of information to Plaintiff; however, the Defendants have not responded to this request. Accordingly, the issue of Plaintiff's access to necessary records and information remains an outstanding, critical issue.

6. Plaintiff has also advised Defendants that it plans to file an amended complaint pursuant to Federal Rule 15, and has even proposed a schedule to Defendants to streamline the amendment process. Defendants have not responded to this proposed schedule.

WHEREFORE, it is respectfully requested that the Court grant Plaintiff's motion for permission to serve expedited discovery, for such other and further relief as the Court deems just and proper.

DATED: April 24, 2024



DAVID G. BURCH, JR.

CERTIFICATE OF SERVICE

I hereby certify that, on April 24, 2024, I served the foregoing document on all counsel of record via the Court's ECF system.

/s/ David Burch, Jr.
David G. Burch, Jr.